ST. LOUIS METRO NEWS

Fighting Sunshine Law Turns Into Expensive Blunder for Missouri Prosecutor

By Danny Wicentowski

Jan 17, 2019 at 6:50 am

SCREENSHOT VIA GOOGLE

Cole County Circuit Court.

Some fights just aren't worth the cost. Consider the case of Cole County Prosecuting Attorney Mark Richardson, who insisted on appealing a circuit

court's 2017 order that he pay a record-setting $12,000 civil penalty over his stubborn refusal to follow the state's Sunshine laws.

But in a ruling announced earlier this week, a panel of judges on the Missouri Court of Appeals' Western District affirmed the decision to fine Richardson for "knowingly and purposefully" violating the state's laws that ensures government records are open to the public.

And that wasn't the only bad news for Richardson. Along with the fine, Cole County must pay $24,070 in attorneys fees — and on top of *that,* the county now owes thousands of dollars more in legal fees to the attorneys who beat Richardson a second time on appeal.

As *RFT* reported in 2017, the initial decision against Richardson, delivered by Cole County Judge Patricia Joyce, included a hefty civil penalty — a rare result in a lawsuit brought against a sitting government official. The $12,000 fine assessed on the prosecutors' office reflected that Richardson had willfully broken the law in order to withhold records from drug policy activist Aaron Malin, Joyce wrote.

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"Just because you're the elected prosecutor of Cole County doesn't mean you're above the law," Malin said in an interview shortly after the civil penalty was announced.

But Richardson didn't let the matter go. He appealed one month later. Notably, he didn't attempt to argue that he himself was blameless. He also didn't challenge Joyce's contention that he had intentionally violated the law.

Instead, Richardson tried to split hairs. In his appeal, he argued that the circuit court had exceeded the $5,000 maximum civil penalty for Sunshine violations. He wanted the fee knocked down.

Additionally, Richardson argued that despite his Sunshine law violations, his office office was still not obligated to give Malin the records the researcher had first requested in 2015. (Malin was seeking records of communication between Richardson's office and the region's drug task force.)

Previously, Richardson had tried to argue that drug task forces are not actually covered by the state's open records law, a contention rejected by Judge Joyce because, basically, that's not how the law works: Drug task forces are governmental agencies, and like other governmental agencies, they are obligated to respond to Sunshine requests and to furnish "open records" as defined under the law.

Richardson's more recent loss came on Tuesday.

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In the unanimous ruling, appellate Judge Mark Pfeiffer rejected both of Richardson's arguments, and hammered the prosecutor — who lost his reelection bid in August to a Republican primary challenger — for once again trying to sidestep the consequences of his law-breaking.

Pfeifer noted that Richardson's position had been met "with disdain" by the circuit court.

"The circuit court's judgment found the Prosecutor's conduct to be undisputedly purposeful, knowing, dilatory, and non-responsive to the requirements of Missouri's Sunshine Law," Pfeiffer wrote.

In the end, what buried Richardson was that he could not plead ignorance. In a footnote, Pfeiffer noted that Richardson had "practiced law since 1984, had served as a municipal judge for over seven years in his career, and had even taught state agency officials about their responsibilities regarding the Sunshine

Law and responding to requests for public records."

And now it's time to pay up. In addition to the $12,000 owed to Malin, Cole County is on the hook for the attorneys' fees incurred while taking the case to circuit court. That bumps the total to more than $36,000.

That figure does not, however, include Richardson's ill-fated appeal. Malin's attorneys from the ACLU of Missouri and the Freedom Center of Missouri are now owed additional fees. Attorney Dave Roland, with the Freedom Center, estimates that the total cost to Cole County could hit $50,000.

Cole County's recently elected prosecutor, Locke Thompson, told ABC 17 News on Tuesday that he's working with the county commission to find the funds to pay the fees and penalty.

Thompson didn't sound too pleased about it, telling the station, "You inherit some things you don't always want to."

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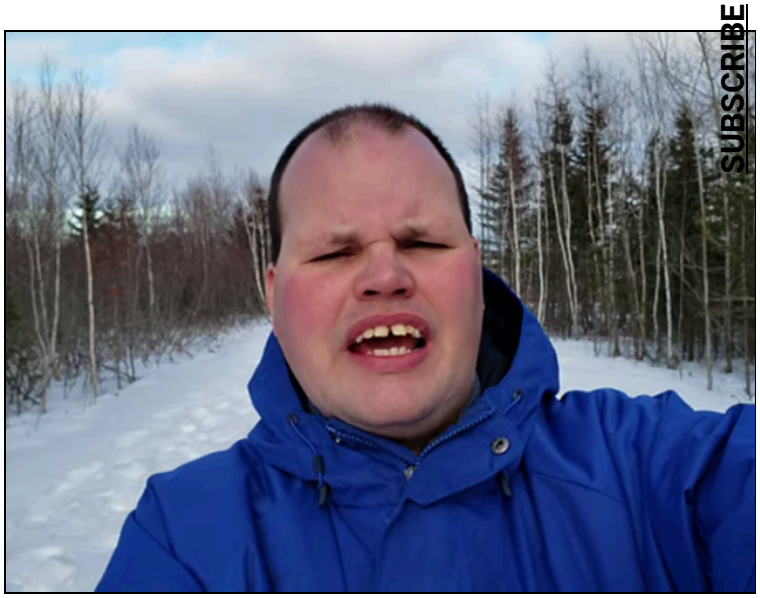

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